



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0084; FRL-9737-8]

Air Quality Implementation Plans; Alabama; Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM_{2.5} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) to EPA on October 7, 2009, for the purpose of providing for attainment of the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in the Alabama portion of the tri-state Chattanooga PM_{2.5} nonattainment area (hereafter referred to as the “Chattanooga Area” or “Area”). The Chattanooga Area is comprised of Catoosa and Walker Counties in Georgia; Hamilton County in Tennessee; and a portion of Jackson County in Alabama. The Alabama SIP revision (hereafter referred to as the “attainment plan”) pertains only to the Alabama portion of the Chattanooga Area (hereafter referred to as “Jackson County”). EPA is now taking final action to approve Alabama’s October 7, 2009, SIP revision regarding reasonably available control technology (RACT) and reasonably available control measures (RACM); reasonable further progress (RFP); contingency measures; and, for transportation conformity purposes, an insignificance determination for PM_{2.5} and nitrogen oxides (NO_x) for the mobile source contribution to ambient PM_{2.5} levels for the Alabama portion of the Chattanooga Area. This action is being taken in accordance with the Clean Air Act (CAA

or Act) and the “Clean Air Fine Particle Implementation Rule,” hereafter referred to as the “PM_{2.5} Implementation Rule,” issued by EPA on April 25, 2007.

EFFECTIVE DATE: This rule will be effective on [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2011-0084. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Richard Wong of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics

Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Joel Huey may be reached by phone at (404) 562-9104, or via electronic mail at huey.joel@epa.gov. Richard Wong may be reached by phone at (404) 562-8726, or via electronic mail at wong.richard@epa.gov.

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I. What Action is EPA Taking?

EPA is taking final action to approve Alabama's SIP revision for the Alabama portion of the Chattanooga Area,¹ as submitted through the ADEM to EPA on October 7, 2009, for the purpose of demonstrating attainment of the 1997 Annual PM_{2.5} NAAQS. Alabama's PM_{2.5} attainment plan for Jackson County includes an analysis of RACM/RACT, an RFP plan, contingency measures, and an insignificance determination for mobile direct PM_{2.5} and NOx emissions for transportation conformity purposes. EPA previously approved the base year

¹ On May 31, 2011, EPA determined that the Chattanooga Area had attaining data for the 1997 Annual PM_{2.5} NAAQS. *See* 76 FR 31239. As such, the State of Georgia withdrew its attainment plan submittal for the Georgia portion of the Chattanooga Area on June 29, 2011. The State of Tennessee has not withdrawn its attainment plan submittal for the Tennessee portion of the Chattanooga Area, however, EPA is not acting on that submittal at this time.

emissions inventory for the Alabama portion of the Chattanooga Area on February 8, 2012 (77 FR 6467).

EPA has determined that Alabama's PM_{2.5} attainment plan for the 1997 Annual PM_{2.5} NAAQS for Jackson County meets the applicable requirements of the CAA and the PM_{2.5} Implementation Rule. Thus, EPA is taking final action to approve Alabama's attainment plan for Jackson County, including the insignificance determination for direct PM_{2.5} and NO_x for Alabama's mobile source contribution to ambient PM_{2.5} levels in the Chattanooga Area. More detail on EPA's rationale for this approval can be found in EPA's July 12, 2012, proposed rulemaking for this action (*see* 77 FR 41132).

II. What is the Background for EPA's Action?

On April 25, 2007, EPA published the PM_{2.5} Implementation Rule for the 1997 PM_{2.5} NAAQS (72 FR 20586). This rule describes the CAA framework and requirements for developing SIPs to achieve attainment in areas designated nonattainment for the 1997 PM_{2.5} NAAQS. Such attainment plans must include a demonstration that a nonattainment area will meet the applicable NAAQS within the timeframe provided in the statute. For the 1997 PM_{2.5} NAAQS, an attainment demonstration must show that a nonattainment area will attain the standards as expeditiously as practicable, but within five years of designation (i.e., by an attainment date of no later than April 5, 2010, based on air quality data for 2007 through 2009). As mentioned above, ADEM provided Alabama's SIP revision with the attainment plan (the subject of this rulemaking) for the Alabama portion of the Chattanooga Area on October 7, 2009.

On May 31, 2011, EPA determined that the Chattanooga Area had attaining data for the 1997 Annual PM_{2.5} NAAQS. *See* 76 FR 31239. That determination was based on quality-assured, quality controlled and certified ambient air monitoring data that shows the Area met the 1997 Annual PM_{2.5} NAAQS. Furthermore, on September 8, 2011, in accordance with CAA 179(c), EPA determined that the Chattanooga Area attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. *See* 76 FR 55774. This information is mentioned here in support of EPA's determination that Alabama's attainment plan was sufficient for the Chattanooga Area to achieve attainment by no later than the required attainment date of April 5, 2010.

As discussed in the May 31, 2011, rulemaking, EPA's determination of attainment² suspended the obligation for the State to meet planning SIP requirements for the Chattanooga Area for so long as the Area continues to attain the 1997 Annual PM_{2.5} NAAQS. *See* 40 CFR 51.1004(c). The State must still submit required emissions inventories consistent with applicable timelines.³ The suspended SIP submission obligations include the attainment demonstration (including in this case the mobile source insignificance determination submitted to satisfy transportation conformity requirements), the RACM/RACT analysis and requirements, the RFP requirements as applicable, and contingency measures. Despite the suspension of the aforementioned attainment plan requirements for the Chattanooga Area for the 1997 Annual

² The determination of attainment is not a redesignation of the Area from nonattainment to attainment and is not an indication that the Area will continue to maintain the standard for which the determination is made. It is merely a determination that the Area attained the standard for a particular three year period and also by the applicable deadline. Please see EPA's May 31, 2011, rulemaking for more detail on the effects of a determination of attainment.

³ EPA has already approved the base year emissions inventory for the Alabama portion of the Chattanooga Area on February 8, 2012 (77 FR 6469).

PM_{2.5} NAAQS, Alabama has requested that EPA take action on its planning SIP for this Area in part because the SIP submittal includes the insignificance determination for conformity purposes.

EPA's July 12, 2012, proposal action provides additional details regarding the rationale for today's final action. A brief discussion is provided here as well. As shown in the table below, ambient PM_{2.5} levels in the Chattanooga Area have declined steadily since Alabama submitted its PM_{2.5} attainment plan in 2009.

**Annual Average Design Value Concentrations in the
Chattanooga Area**

Site Name	County	Site Number	Design Values (Average of Three Consecutive Annual Average Concentrations) (µg/m ³)			
			2008	2009	2010	2011
Siskin Drive	Hamilton, TN	47-065-4002	14.3	12.7	11.6	11.1
Tombras Avenue	Hamilton, TN	47-065-0031	14.0	12.6	11.6	11.2
Soddy-Daisy High School	Hamilton, TN	47-065-1011	13.0	11.7	11.4	11.0
Rossville	Walker, GA	13-295-0002	13.5	12.3	10.7	10.1

EPA understands that the State chose not to withdraw the attainment plan SIP revision for its portion of the Chattanooga Area because it includes a mobile insignificance determination for direct PM_{2.5} and NO_x emissions from mobile sources. EPA is now taking final action to approve the submittal.

On July 12, 2012, EPA proposed to approve Alabama's PM_{2.5} attainment plan, which includes an attainment demonstration; RACT and RACM; RFP; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct PM_{2.5} and NO_x for the mobile source contribution to ambient PM_{2.5} levels for the State's portion of the Chattanooga

Area. As mentioned above, more detail on EPA's rationale for this approval can be found in EPA's July 12, 2012, proposed rulemaking for this action. *See* 77 FR 41132.

The recent D.C. Circuit decision on the Cross-State Air Pollution Rule (Transport Rule), *EME Homer Generation LP v. EPA*, No. 11-1302 (D.C. Cir., August 21, 2012)⁴ does not disturb EPA's determination that it is appropriate to move forward with this final action. As EPA explained in the proposed rule, the air quality analysis conducted for the Transport Rule demonstrates that the Chattanooga Area would be able to attain the 1997 Annual PM_{2.5} NAAQS even in the absence of either the Clean Air Interstate Rule (CAIR) or the Transport Rule. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, and as EPA also explained in the proposal, *see* 77 FR 41136, the Transport Rule is not relevant to this action. The Transport Rule only addressed emissions in 2012 and beyond. As such, it is not relevant to the question addressed in today's action – whether the attainment plan submitted by Alabama is sufficient for bringing the Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated.

For this same reason, the status of CAIR after the April 2010 attainment date is also not relevant to this action. While the monitoring data that shows the Area attained the 1997 Annual PM_{2.5} NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to action on this attainment plan. CAIR was an enforceable control measure during the relevant period applicable to affected sources in the Area, as well as sources throughout the eastern U.S. As such, the status

⁴ The court's judgment is not final at this time as the mandate has not yet issued.

of CAIR after that date is irrelevant and does not impact our conclusion that the attainment plan should be approved. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. *See Homer*, slip op. at 60. In sum, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

The comment period for EPA's July 12, 2012, proposed rulemaking closed on August 13, 2012. EPA did not receive any comments, adverse or otherwise, on the proposed rulemaking to approve Alabama's submission for the 1997 PM_{2.5} NAAQS, which includes an attainment demonstration; RACT and RACM; RFP; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct PM_{2.5} and NO_x for the mobile source contribution to ambient PM_{2.5} levels for the State's portion of the Chattanooga Area.

III. Final Action

EPA is taking final action to approve a revision to Alabama's SIP submitted to EPA by ADEM on October 7, 2009, for the purpose of demonstrating how the Alabama portion of the Chattanooga Area would achieve attainment of the 1997 Annual PM_{2.5} NAAQS by no later than April 5, 2010. Alabama's October 7, 2009, SIP revision includes an attainment demonstration; RACT and RACM analyses; an RFP plan; base-year emissions inventories; contingency measures; and, for transportation conformity purposes, an insignificance determination for direct PM_{2.5} and NO_x for the mobile source contribution to ambient PM_{2.5} levels for the State's portion of the Chattanooga Area. After review and consideration of the relevant information and data,

EPA has determined that the Alabama October 7, 2009, SIP revision is consistent with the CAA and EPA's PM_{2.5} Implementation Rule, and as such EPA is approving this SIP revision.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2012.

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B- Alabama

2. In § 52.50, table “EPA Approved Alabama Non-Regulatory Provisions” in paragraph (e) is amended by adding a new entry for “Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM_{2.5} Nonattainment Area” to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	**	*	*	*
Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual PM _{2.5} Nonattainment Area	A portion of Jackson County, Alabama	10/07/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

[FR Doc. 2012-24525 Filed 10/04/2012 at 8:45 am; Publication Date: 10/05/2012]